IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 696 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAVJIBHAI HARJIBHAI SANGANI

Versus

RADHABEN RAMBHAI

Appearance:

1. First Appeal No. 696 of 2002

(MR BK PARIKH) for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 19/04/2002

ORAL JUDGEMENT

1. Savjibhai Harjibhai Sangani, appellant - original opponent No.1 has filed this appeal against the judgment and decree dated 10th July, 1991, passed by the learned Civil Judge (S.D.) & Ex-officio Commissioner for

Workmen's Compensation, Amreli in Workmen's Compensation Application No.23/90. The learned Judge by his impugned judgment allowed the application of the respondent workman and directed the applicant No.1 is entitled to recover Rs.61,785/- from the opponents No.1 and 2 by way of compensation. The applicant No.1 is also entitled to recover 50% penalty of the compensation amount i.e. Rs.30,892/- from the opponent No.1 and he is also entitled to recover 6% simple interest per annum on the amount of compensation and penalty from opponent No.1 from the date of accident till its realisation.

2. The facts giving rise to this appeal are as under:-

2.1 Radhaben Rambhai and Unadbhai Rambhai had filed application for compensation under Section 22 read with Rule 20 of the Workmen's Compensation Act, 1923 (hereinafter referred to as `the Act'), for the homicidal accident causing the death of Badarubhai Rambhai of Lalavadar (hereinafter described as the `deceased'). The applicant No.1 is the mother and applicant no.2 is the elder brother of the deceased.

2.1 It is their case that deceased Badarubhai was employed by opponent No.1 as cleaner for his goods Truck No.GTS 8709 which was being plyed on hire. It was further case that on 1.5.1989 the deceased was returning in the said goods truck from Hyderabad to Junagadh with goods loaded in the truck and when it was passing near Bhalki Bridge near Bhalki Town within Bidar district of Karnataka State, two culprits who might have climbed up that truck from behind at the last bault in the darkness of the night entered the driver's cabin at about 2.30 a.m. from both side and assaulted driver Kasubhai Danabhai and the deceased and caused serious injuries to both of them. They looted Rs.7000/- from the driver and ran away.

2.2 In view of such situation they filed application for compensation against the opponent No.1 and also opponent No.2 insurance company. The learned Judge by his impugned judgment has held that the deceased Badarubhai was workman of opponent No.1 within the meaning of Workmen's Compensation Act. The learned Judge also held that the assault which is an accident as envisaged in Sec.3 of the Act arose out of and in the course of his employment as opponent No.1's cleaner and therefore the learned Judge has held that the opponent No.1 is liable for payment of compensation.

3. I have gone through the reasonings of the learned Judge in this behalf. I have also heard the contention of the learned advocate for the appellant and also the respondent in this behalf. In my view the learned Judge has given very cogent and convincing reasons to come to a right conclusion and I do not see any infirmity in the order of the learned Judge in this behalf. In view of the same, the appeal is dismissed with no order as to costs.

(K.M. Mehta, J.)

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